

## REGISTER OF CLASSIFICATION DECISIONS

|                                  |                                  |
|----------------------------------|----------------------------------|
| Date of entry in Register:       | 28 September 1998                |
| Name of applicant/court:         | The District Court at Wellington |
| Applicant to the Labelling Body: | Not Applicable                   |
| Title of Publication:            | Untitled                         |
| Other Known Titles:              | Folder One Number 103/27         |
| Director:                        | Not Applicable                   |
| Producer:                        | Not Applicable                   |
| Publisher:                       | Not Applicable                   |
| Author:                          | Not Applicable                   |
| Format:                          | Photograph                       |
| Country of Origin:               | Not Applicable                   |
| Language:                        | Not Applicable                   |

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### **Components of film originally examined:**

|           |                |                     |
|-----------|----------------|---------------------|
| Feature:  | Not Applicable | Running time:       |
| Trailers: |                | Running time:       |
|           |                | Total Running time: |

Excision/Alteration: Not Applicable.

Reason(s) for Excision:

Not Applicable.

Classification Decision:

Objectionable.

Display Conditions:

Not Applicable.

Descriptive Note:

... Please turn over

Not Applicable.

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Direction to issue a label has been given on      Not Applicable

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**SUMMARY OF THE REASONS FOR DECISION:**

The untitled photograph, also known as *Folder One Number 103/27*, is classified as: Objectionable.

The photograph exploits the nudity of a child, appears to be intended for sexual arousal, and breaches the rights of a child to a significant extent and degree.

The publication is a colour photograph which has been glued onto a piece of A4 size card. The numbers "103/27" appear in a small circle at the top of the photograph. The photograph is a snapshot of a young naked girl standing in the water at the edge of a stream or pond. The genitals of the girl are visible. The nudity of the girl is emphasised by the fact that she is facing towards the camera and dominates the frame.

The photograph is one of 49 photographs referred to the Classification Office under a court order. The photographs are of a similar nature, depicting two girls, either alone or together, in various states of undress.

Submissions made by both the informant and the parents of the young girls who are the subjects of the photographs, contend that the photographs deal with matters of sex in such a manner that the availability of the publications is likely to be injurious to the public good.

In considering the matter, the Classification Office finds that s3(3) of the Films, Videos, and Publications Classification Act 1993 (the FVPC Act) is relevant in that the photograph exploits the nudity of the girl pictured to some degree. Contextual matters relating to the photograph have been considered under s3(4) of the FVPC Act.

On its own, this photograph is not unlike any other family snapshot. However, taken in the context of the other 48 photographs a different scenario emerges. The Classification Office is required to examine and classify each publication in its own right. In arriving at a determination, the Classification Office is required, under s3(4) of the FVPC Act, to attend to the issues of availability and purpose. The fact is that this photograph was not taken in isolation. It is one of a series of photographs recording the state of dress, or undress as the case may be, of two young girls who are sisters. The sisters were not with their parents at the time the photographs were taken. The evidence put to the Classification Office is that the parents had no knowledge of the photographs being taken, and that the photographs were taken without their consent. There is therefore some suggestion the photographs may be intended for circulation amongst adults with a sexual interest in children.

Furthermore the interests of the children are at issue. The children's privacy has been breached, and their trust abused. Their right to privacy and to be free from exploitation are attested to in the United Nations Convention on the Rights of the Child, which New Zealand has ratified. In addition, the girls are readily identifiable,

and easily located here in New Zealand. The Classification Office is concerned that the children's privacy is upheld, particularly where the photograph is open to a sexual interpretation, in light of the circumstances relating to the intended use of the photograph. The issue of how easily the photograph can be made widely available has significance when considering the factors discussed above. Thus, in arriving at its determination, the Classification Office gives weighting to the manner in which the photograph exploits the nudity of the child portrayed, the submissions made to the Classification Office by both the informant and the child's parents, sections 3(4)(b), (c), (d), (e), and (f) of the FVPC Act, and the rights of the child. The Classification Office believes that there is likely injury to the public good in the photograph being made available.

OFLC Ref: 9800395